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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/801,027	03/15/2004	Dianne L. Cleary	UK8103	1252

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ASHKAN NAJAFI, P.A.
6817 SOUTHPOINT PARKWAY
SUITE 2301
JACKSONVILLE, FL 32216

EXAMINER


SANTOS, ROBERT G

ART UNIT	PAPER NUMBER
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3673

DATE MAILED: 01/25/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

 Office Action Summary	Application No.	Applicant(s)	
	10/801,027	CLEARY, DIANNE L.	
	Examiner	Art Unit	
	Robert G. Santos	3673	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 March 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3, 5-9, 11-14 and 16-18 is/are rejected.
- 7) ☒ Claim(s) 4, 10 and 15 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>03152004</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Objections

1. Claims 1, 8 and 14 are objected to because of the following informalities: In the fourth line of claims 1, 8 and 14, the term “axis” should be changed to --axis--. Appropriate correction is required.

Claim Rejections - 35 USC § 112

2. Claims 5, 6, 11, 12 and 17 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The phrase “*said* plurality of locking bars” as recited in claims 5 and 11 lack proper antecedent basis due to their dependencies upon claims 1 and 8, respectively, thereby rendering these claims indefinite. Furthermore, claims 6, 12 and 17 are rendered indefinite because the use of trademarks such as Velcro® is prohibited in claim language. (For this case, a phrase such as “a hook and loop type fastener, such as the one sold under the Trademark of Velcro” should be used.)

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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4. Claims 1, 3, 5 and 6 are rejected under 35 U.S.C. 102(b) as being anticipated by Nowak et al. '756. Nowak et al. '756 show the claimed limitations of a portable apparatus (10) comprising a plurality of padded members (15) having a plurality of centrally disposed longitudinal axes respectively, the plurality of padded members including top (18a, 26a) and bottom (18b, 26b) edge portions (18b, 26b) substantially equally spaced from the corresponding axis and extending substantially parallel thereto respectively, the plurality of padded members including front (24a) and rear (24b) end portions integral with the top and bottom edge portions, the plurality of padded members further including a plurality of fastening members (30a, 30b, 36) attached thereto; a plurality of support bars connectable to the plurality of padded members via the plurality of fastening members respectively, the plurality of support bars having opposed end portions (16a, 12a & 28a and 16b, 12b & 28b) rotatably engageable with each other respectively adjacent the front and rear end portions respectively, select ones of the end portions including a plurality of notches (50, 52) spaced thereabout and being positionable below a mattress (as described in column 3, lines 24-27); and means for selectively locking the plurality of support bars at predetermined positions, the locking means comprising a plurality of guide members (44) secured to the plurality of support bars, and a plurality of elongated locking bars removably positionable through the plurality of guide members respectively, the plurality of locking bars including bottom end portions (46a, 46b, 48a, 48b) selectively positionable within the plurality of notches as the plurality of support bars are pivoted in an arcuate path (as shown in Figures 5A-5C and as described in column 4, lines 21-59). As concerns claims 5 and 6, the reference is considered to disclose conditions wherein the plurality of locking bars extend

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between the top edge and the bottom edge respectively (as shown in Figures 1-4) and wherein the plurality of fastening members comprise Velcro (see Figures 2 & 3 and column 3, lines 59-61).

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 2, 8, 9, 11, 12, 14, 16 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nowak et al. '756 in view of Baker et al. '677. Nowak et al. '756 do not specifically disclose the use of a headboard including a plurality of fastening members, one of the plurality of fastening members extending along a length of the headboard. Baker et al. '677 provide the basic teaching of a headboard (11) connected to a pair of parallel side panels (14, 15) by a plurality of fastening members (25, 26, 41), wherein one of the plurality of fastening members (26) extends along a length of the headboard. The skilled artisan would have found it obvious at the time the invention was made to modify the apparatus of Nowak et al. '756 to include a headboard having a plurality of fastening members, wherein one of the plurality of fastening members extends along a length of the headboard, in order to provide an additional barrier which further stabilizes the structure of the apparatus, thereby imparting enhanced safety to a user positioned on a bed having the apparatus mounted thereto.

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7. Claims 7, 13 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nowak et al. '756 in view of Baker et al. '677, further in view of Thim, Jr. '440 and Murrell '111. Nowak et al. '756, as modified by Baker et al. '677, do not specifically disclose the use of a storage member and a cup holder connectable to the plurality of padded members; and a night light removably engageable with the headboard. Thim, Jr. '440 provides the basic teaching of a portable apparatus (10) provided with a padded member having a storage member (60) and a cup holder (74), whereas Murrell '111 provides the basic teaching of a headboard (H) including a night light (25). The skilled artisan would have found it obvious at the time the invention was made to provide the apparatus of Nowak et al. '756, as modified by Baker et al. '677, with a storage member and a cup holder connectable to the plurality of padded members in order to allow a user to access readily items while reclining in bed, thereby increasing the versatility of the apparatus; the skilled artisan would have also found it obvious at the time the invention was made to provide the apparatus of Nowak et al. '756, as modified by Baker et al. '677, with a night light removably engageable with the headboard in order to allow a user to read more easily in bed as desired (see Murrell '111, column 1, lines 5-8; column 2, lines 28-33; and column 3, lines 7-9).

Allowable Subject Matter

8. Claims 4, 10 and 15 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. The examiner respectfully asserts that it would not have been obvious at the time the invention was made to modify the respective devices of Nowak et al.

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'756 and of Nowak et al. '756 as modified by Baker et al. '677 to include a plurality of spring members positioned between the plurality of end portions and select ones of the plurality of guide members as specifically recited in claims 4, 10 and 15.

Conclusion

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Verhulst '765, Verhulst '459, Wolf '693 and Herz et al. '594.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert G. Santos whose telephone number is (703) 308-7469. The examiner can normally be reached on Tues-Fr and first Mondays, 10:30 a.m. to 8:00 p.m..


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Heather C. Shackelford can be reached on (703) 308-2978. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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Robert G. Santos
Primary Examiner
Art Unit 3673

R.S.

January 23, 2005